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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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|---------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA, |) | No. CR-14-0582-JD |
| |) | |
| Plaintiff, |) | JOINT DEFENSE OPPOSITION TO THE |
| |) | GOVERNMENT'S PROPOSED JURY |
| Vs. |) | INSTRUCTION MODIFICATION |
| |) | |
| ALVIN FLORIDA, et al., |) | Honorable James Donato |
| |) | |
| Defendants. |) | |
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The defendants, by and through their counsel, jointly submit this JOINT DEFENSE
OPPOSITION TO THE GOVERNMENT'S PROPOSED JURY INSTRUCTION
MODIFICATION.

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JOINT DEFENSE OPPOSITION

The Court earlier indicated that it intends to withdraw instructions #6 (Elements of Conspiracy), #7 (Conspiracy – Knowledge of and Association with Other Conspirators) and #8 (Multiple Conspiracies) from the final jury instructions. The Court informed the parties that it considered the 3 above instructions unnecessary and confusing given the language in instruction #2 (Elements of the Bid-Rigging Offense) and instruction #3 (Bid Rigging).

Without any supporting authority, the government then requested that it fashion and submit another instruction or modification for the Court’s consideration. Yesterday, the Court instructed the parties to Meet & Confer before any such instruction or modification was submitted.

The government failed to Meet and Confer as ordered and further failed to provide the defense with its proposed instruction or modification *prior* to its filing late last evening.

The defense objects to the government’s proposed changes to the Ninth Circuit Model Instruction as written and previously used by Judge Hamilton. Clearly, the government is attempting to “paste and cut” the same unnecessary language the Court excluded from the 3 redundant instructions into the Ninth Circuit’s Model Instruction “Knowingly.” The government provides no supporting authority to deviate or alter from this time tested model instruction. In fact, instruction #2 (Elements of the Bid-Rigging Offense) which was omitted from and not mentioned in the government’s late evening filing, plainly includes in element number 2 the “knowingly” requirement. Model Instruction #9 (Knowingly) simply and plainly explains this term to the Jury.

In short, the government’s proposed modification should be rejected as unnecessary and without supporting authority. The model instruction defining “knowingly” is clear, concise and

1 should remain unaltered. Furthermore, the defense maintains that any change to the instructions
2 as now submitted by the government must necessarily include the Multiple Conspiracy language
3 (Instruction # 8) as previously argued and submitted by Judge Hamilton in trial #1.

4 Dated: December 13, 2016

Respectfully Submitted,

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6 _____/s/_____
7 SHAFFY MOEEL
8 Attorney for Defendant
9 ALVIN FLORIDA, JR.

10 _____/s/_____
11 STEVEN GRUEL
12 Attorney for Defendant
13 ROBERT ALHASHASH RASHEED

14 _____/s/_____
15 JOHN FORSYTH
16 Attorney for Defendant
17 JOHN LEE BERRY, III

18 _____/s/_____
19 EDWIN PRATHER
20 Attorney for Defendant
21 REFUGIO DIAZ